

(Criminal Jurisdiction)

IN THE MATTER BETWEEN:

ROBERT CHIBANGU

APPELLANT

AND

THE PEOPLE

RESPONDENT

CORAM: Ngulube, D.C.J., Gardner and Sakala, JJ.S.

15th September, 1987

For the Appellant : M. Chitabo, Mwanawasa and Company

For the Respondent : J.M. Mwanachonga, Senior State Advocate

J U D G M E N T

Ngulube, D.C.J., delivered the judgment of the court.

The appellant pleaded guilty to a charge of theft contrary to section 272 of the Penal Code. The particulars were that on 31st August, 1984 at Kafue, he stole ten thousand litres of paraffin the property of Nitrogen Chemicals of Zambia. He was sentenced to two years imprisonment with hard labour which, on appeal, was reduced to twelve months, the learned appellate commissioner being of the impression that the appellant was facing two counts.

On the hearing of this appeal, counsel applied to abandon the ground which attacked the conviction and in which the appellant was putting forward two contradictory and inconsistent allegations. One allegation was that the police forced him into pleading guilty while the other allegation was that the learned trial magistrate wrongly entered a plea of guilty when what he had said amounted to a plea of not guilty. There was very little merit in that line of argument, and Mr. Chitabo very properly abandoned this ground of appeal. We accept this abandonment. Mr. Chitabo has also advanced on behalf of the appellant a moving plea in mitigation. He points out that the learned trial commissioner had intended to exercise more leniency than was shown had the learned appellate

commissioner realized that the appellant only had one charge. He has also pointed out that the appellant had for thirty-nine years lived a clean life; he has family obligations; and that the protracted proceedings have had an effect on him. The appellant is currently working for another employer and has asked us to give him a chance to turn over a clean leaf. We have taken this very able mitigation into account and though theft is an intrinsically serious matter, we take into account that in the circumstances of this particular appellant and the facts of this particular case there is room to give the appellant another chance. The appeal against the effective sentence of twelve months in relation to the one count only is allowed to the extent that we suspend the whole of the sentence for a period of two years on condition that within that period the appellant should not commit any offence involving dishonesty.

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M.S. Ngulube
DEPUTY CHIEF JUSTICE

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B.T. Gardner
SUPREME COURT JUDGE

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E.L. Sakala
SUPREME COURT JUDGE